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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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In the Matter of

Supplemental Advance Notice of Proposed
Rulemaking

Computer Reservations System (CRS) Regulations
(14 CFR Part 255)

Dockets Nos. OST-97-2881 - 172
OST-97-3014 - 41
OST-98-4775 - 86

REPLY COMMENTS OF AMERICA WEST AIRLINES, INC.

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October 23, 2000

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REPLY COMMENTS OF AMERICA WEST AIRLINES, INC.

America West Airlines, Inc. (“America West”) files these comments as a reply to the comments filed in response to the Department of Transportation’s (“DOT”) Supplemental Advance Notice of Proposed Rulemaking (“SANPRM”) request for comments regarding the re-examination of its rules governing Computer Reservations Systems (“CRS”), issued on July 24, 2000.¹ America West believes the positions it expressed in its initial comments are in the mainstream of views expressed by parties whose primary focus is to preserve and promote competition in air transportation.² The Department should not be misled by those who argue the Department should adopt an “anything-goes approach” to Internet travel agencies to promote

¹ Docket No. OST-98-4775, 65 *Fed. Reg.* 45551 (July 24, 2000).

(continue)

competition among those agencies. The issue is whether any form of regulation is required to protect competition in air transportation. America West believe the parties which have focused their comments on airline competition have reached the same conclusions as America West on the specific issues raised by the Department and support the continued need for CRS regulation, as well as application of certain CRS rules to Internet travel agencies that sell tickets on multiple carriers.

America West and most of the parties believe continued Department regulation of CRSs remains absolutely necessary to safeguard consumer expectations, preserve competition among carriers and shepherd rapidly developing Internet-based innovations in distribution within the air travel industry. To bring the regulations in line with market reality, the rules should specifically include coverage based on carrier marketing, technical or service agreements with CRSs.

America West believes the comments strongly support regulation to prevent display bias by multi-carrier online travel agencies, but that a carrier's ability to offer consumers the benefit of low-cost fares exclusively on its own website must be preserved. America West, like a number of parties, recommends that, for the mandatory participation rule to remain effective, it should be specifically extended to include airlines that have established marketing or similar agreements with CRSs. America West remains concerned about the negative impacts which the availability of CRS marketing data can have on small, new-entrant carriers. It is unsure however, whether

(continued)

² See also America West's Petition for Rulemaking and Response to DOT's ANPRM, Docket No. OST-97-2881 ("ANPRM Comments"), America West's Reply Comments to DOT's ANPRM and Amended Petition for Rulemaking, Docket No. OST-97-3014 ("ANPRM Reply Comments"), and America West's Comments to DOT's SANPRM, Docket No. OST-98-4775 ("SANPRM Comments").

large carriers can be kept from accessing marketing data directly, and thus America West changes its view on the abolition of section 255.10(a). It does however, favor the establishment of a role providing for the free and fair availability of CRS marketing data. Finally, America West notes the concern expressed by most carriers over the continued escalation of CRS booking fees. America West is convinced that direct regulation of these charges is the only approach to solving this problem and providing protection to smaller and new entrant carriers, which is critical to the success of a competitive air transportation system.

I. THERE IS UNIVERSAL SUPPORT FOR CONTINUATION OF THE CURRENT CRS REGULATIONS

The vast majority of comments share America West's view that the CRS regulations remain necessary to spur competition within the air travel industry, to ensure access to unbiased information by consumers and travel agents, and to protect smaller, new entrant air carriers from discrimination. Virtually every commenter recognizes that the CRS are, and will remain, the backbone of airline distribution for the foreseeable future.

Of the thirty-four comments filed, only United Airlines, and to a more limited degree, Northwest and Galileo, propose an end to CRS regulation. United has opposed CRS regulation since its inception, so its continued opposition comes as no surprise. United's argument that the decline of airline ownership obviates the need for regulation is misplaced. As a dominant domestic carrier, United would have strong leverage to seek to introduce bias into CRS displays, and obtain special discounts, even if it had no direct ownership interest in a CRS. Indeed, as advocated by America West and many other commenters, including e.g., Qantas, Alaska and Midwest Express, broadening the current definition of a "system" to include commercial

relationships (e.g., marketing, technical, and service agreements), as well as ownership by an air carrier of a CRS vendor, is necessary to ensure that CRSs not owned by airlines continue to function as neutral information sources. In this regard, America West agrees with the statement of Amadeus that “there are currently no airline-unaffiliated CRSs.” *See* Comments of Amadeus, at 11. Moreover, even Sabre, the CRS free of airline ownership, comments that it should remain subject to the regulations due to the marketing agreements it has with American and Southwest. *See* Comments of Sabre, at 8. As long as the majority of airline tickets continue to be sold through CRSs that are affiliated, or marketed by air carriers, the threat of display bias and discriminatory charging practices will remain. Ownership thus becomes only one form of such affiliation and should not be the sole factor in determining the need to regulate a CRS.

Finally, America West does not favor establishing a specific expiration date for the CRS regulations. Although the regulations will undoubtedly require modification as varying channels and methods for selling airline tickets continue to evolve, America West believes it would be unwise to establish an arbitrary date for re-evaluation of the regulations, as suggested by both Continental (i.e., three years) and Delta (i.e., three to five years). *See* Comments of Continental, at 5; Comments of Delta, at 2. Rather, the Department should monitor these regulations on an ongoing basis over the next several years to re-evaluate the effectiveness of the regulations in general, or any specific sub-parts, as the need arises. The fluid nature of the ticket sales and distribution mechanisms presently operating within the industry clearly requires this vigilance and regulatory flexibility.

II. THE COMMENTS SUPPORT EXTENSION OF THE CRS DISPLAY REGULATIONS TO MULTICARRIER ONLINE TRAVEL SITES BUT SHOULD NOT REGULATE SINGLE CARRIER WEBSITES

America West and many other commenters recognize that over-regulation of Internet-based distribution systems could stifle pro-competitive and consumer friendly enhancements to the airline travel industry. However, America West repeats its strong belief that online travel agencies selling tickets for more than one air carrier must be subjected to the CRS regulations governing display bias, as such sites create an impression of neutrality that may or may not be warranted. More specifically, these sites must display the flights of any non-stop carrier in a market, unless a carrier opts out of the site, and to the extent a site offers a “price-based” search method, it must be required to disclose the lowest fare available regardless of the carrier.

America West and others, such as Midwest Express and Alaska, have noted in response to the SANPRM that consumers booking via the Internet are essentially acting as their own travel agents and cannot reasonably be expected to investigate the multitude of issues that could effect an online agency’s screen display strategy – particularly if that site claims or appears to provide neutral displays. Significantly, today’s leading multi-carrier online travel agency, Travelocity, supports this position, noting the need to “preserve for consumers the protection that is already provided today for professional travel agents.” *See* Comments of Travelocity, at 17. Indeed it is fair to say that consumers need this protection more than travel agents. Moreover, to the extent that Internet agencies such as Orbitz are in fact neutral sources of information, the application of the rule should not interfere with their business models.³

³ To the extent an agency believes its system is neutral, but different for the requirement of Part 255, the agency can seek a waiver or an exemption from the regulation.

Conversely, the CRS rules are unnecessary to protect consumers using either single-carrier or specialty travel sites, as consumers would not reasonably expect such sites to provide a neutral display and would not be subjected to misleading comparisons. The airline commenters were unanimous in their agreement that no justifications exist for regulating single-carrier websites. Single-carrier websites enhance competition within the industry, since lower distribution costs permit air carriers to offer lower fares to the consumer. There is no economic or competition argument to support the views of American Express that “if an airline posts a fare on its proprietary Web site, it should post the fare in competing systems[.]” American Express, at 3.⁴

As America West has noted, any requirement carriers must offer special internet fares posted on their own websites through conventional distribution channels, as well as through other Internet distribution channels, would eliminate the availability of these low fares, as an airline’s ability to control and minimize distribution costs would cease. This, in turn, would deprive the consumer of the benefits of the lower distribution costs and would limit competition accordingly. To the extent a carrier offers a special Internet fare to a multi-carrier travel agency, America West is sympathetic to the view that such fares should be made available to similar sites willing to match the lower distributions charges offered to the carrier.

⁴ Similarly (although it is unclear whether Amadeus is referring to single-carrier sites and/or multi-carrier online travel sites), Amadeus asserts “[t]he Department also should exercise its regulatory authority to prevent airlines from displaying special or reduced fares exclusively on Internet sites [], particularly those with which the airline has some type of ownership, marketing or other commercial ties.” *See* Comments of Amadeus, at 23.

**III. THE COMMENTS SUPPORT THE COVERAGE OF
MARKETING AGREEMENTS UNDER THE
MANDATORY PARTICIPATION RULE**

America West and a number of other carriers, including Northwest and Continental, continue to stress the need to expand the mandatory participation rule to include air carriers that have established marketing, technical, support, or other similar agreements with CRS vendors. As previously stated, the existence of such agreements between an airline and a CRS vendor creates the same, if not more, concern over the potential for bias than does outright airline ownership of a CRS. Under either arrangement, a large airline could wield a substantial amount of influence over an owned or affiliated CRS to the detriment of other carriers and overall industry competition. America West agrees with the observation of Worldspan that “the Department [has] recognized that system marketers as well as system owners have the incentive and ability to engage in anticompetitive behavior.” *See* Comments of Worldspan, at 11.

**IV. THE DOT SHOULD SUBSTANTIALLY AMEND THE RULES
REGULATING THE SALE OF CRS TRANSACTION DATA**

Although it previously supported the comments of the Air Carrier Association of America (“ACAA”) in recommending the abolition of section 255.10(a) governing the mandatory availability of CRS transaction data, America West no longer supports this position. On reflection, America West is convinced that, unless steps are taken concurrently to prevent large carriers from obtaining directly from travel agents or corporate customers the marketing, sales and technical data relating to transactions made by smaller, new-entrant carriers, those airlines will be the only ones to have access to this information.

America West is also concerned about the current pricing schemes for available marketing data. Although CRSs now permit selective International MIDT purchases so a carrier can buy MIDT via either the geographic market or the ARC number, the cost of such data is still disproportionately high in view of the information obtained. America West believes that MIDT data should be made available at no cost or at a cost proportional to the amount of information provided.

V. THE DOT SHOULD EXPAND ITS SCOPE OF REGULATION OVER CRS BOOKING FEES

Through its submissions to both the ANPRM and SANPRM, America West has detailed a number of issues illustrating the need for increased regulation in the area of CRS booking fees, and its particular concern over the level of CRS booking fees. Virtually every U.S. carrier expressed the view that CRSs vendors extract monopoly profits from participating carriers. America West has experienced a substantial increase in the booking fees it has been assessed by all CRSs since 1992. *See* SANPRM Comments of America West, at 12.⁵ Midwest Express reported a similar increase over the same time period. *See* Comments of Midwest Express, at 22-23.⁶ Significantly, Continental asserts that Sabre has increased its booking fees by approximately 1400% over a seventeen-year period. *See* Comments of Continental, at 4.

Despite progress in curbing abusive booking practices by travel agents, the fact remains that air carriers being assessed the booking fees do not have an option to select the CRS a travel

⁵ The average increase in CRS fees for America West during the period 1992-1997 was 33%. During the period 1998-2000, booking fees for America West increased as follows: Amadeus (12.8%); Apollo (14.6%); Worldspan (18.7%); and Sabre (15%).

⁶ Midwest Express cited an increase of between 12.7% and 25.2% in CRS fees during the period 1993-1999.

agent will utilize. Thus, the party deciding the market share of a CRS (i.e., the travel agent) does not pay the cost of using the system. Moreover, travel agents receive payments from CRSs for using its system. The airline is then forced to pay increased booking fees in order to offset the CRSs' cost of paying the travel agent. For these reasons America West reaffirms its request that the Department either require CRS vendors to justify fee increases exceeding one-half of the increase in the Consumer Price Index ("CPI") or establish a system where CRS charges must be tied to costs. *See* SANPRM Comments of America West, at 11-13. Midwest Express has also requested that the Department take steps to control CRS booking fees. *See* Comments of Midwest Express, at 21-23. In this regard, America West does not support the proposals of American and United to abolish the mandatory participation rule as a way to reduce CRS booking fees. *See* Comments of American, at 23-24; Comments of United, at 4, 8. America West believes such a step may benefit large carriers with adequate market leverage to limit the impact of reduced CRS participation or to influence CRS behavior to their benefit. However, this solution would likely harm smaller, new-entrant carriers – the essential catalysts for industry competition.

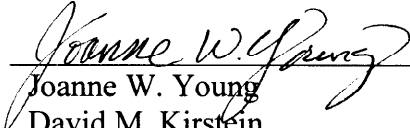
VI. CONCLUSION

America West, respectfully requests that the Department carefully consider each issue addressed by America West in both its ANPRM and SANPRM submissions. In these reply comments, America West has attempted to focus the Department on certain issues of greatest concern. America West urges the Department to expand the scope of the CRS regulations to apply not only to airline owners, but also to airlines that have entered into marketing or similar

service agreements with CRSs. The mandatory participation rule should be similarly extended. The CRS display bias rules should also be applied to multi-carrier online travel agencies that, unlike single-carrier websites, have the potential to present biased information to users/consumers who are likely to be misled about the neutrality of the information. CRS marketing data should be made available to all carriers at no cost or at a cost proportional to the amount of information provided. Finally, the DOT should take necessary steps to reduce the negative impacts stemming from CRS booking fee practices that injure air carriers and thereby deprive consumers of more competitively priced air travel.

By taking these actions, America West believes the Department can substantially advance its fundamental goal to promote competition and new entry in air transportation and protect the rapidly growing population of Internet consumers from relying on misleading information from online travel agencies.

Respectfully submitted,

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October 23, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2000, I caused a true and correct copy of the foregoing Reply Comments of America West Airlines, Inc., to be served by first-class U.S. mail, postage prepaid, upon the parties listed on the following Service List.



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